

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA**

MICHAEL S. ARGENYI, Plaintiff, v. CREIGHTON UNIVERSITY, Defendant.)	CASE NO. 8:09CV341 MEMORANDUM AND ORDER
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This matter is before the Court on the Plaintiff's Motion to Strike/Motion for Protective Order (Filing No. 292)¹. Plaintiff Michael Argenyi ("Argenyi") contends that Defendant Creighton University ("Creighton") improperly added the names of Argenyi's lawyers, Dianne DeLair and Mary Vargas, to the Defendant's witness list to lay foundation for certain email communications between Argenyi and Creighton. Argenyi states that he is willing to stipulate to certain facts contained in the emails, and is willing to waive any objections regarding the authenticity of the emails, but is not willing to waive foundational objections, because the emails contain hearsay. Creighton responds that the emails are relevant to issues of what accommodations Argenyi requested from Creighton at various times, and how Creighton responded to such requests, and they demonstrate a lack of deliberate indifference on the part of Creighton. Creighton also states that it will withdraw the names of DeLair and Vargas from the witness list if Argenyi will waive foundational objections to the emails, and Argenyi may continue to pursue his hearsay objections.

¹ The Court has considered the Plaintiff's Brief (Filing No. 293), the Plaintiff's Index of Exhibits (Filing No. 294), and the Defendant's Brief (Filing No. 300). Because this matter is scheduled for jury trial beginning on August 20, 2013, and the Plaintiff's reply brief is not due until after commencement of trial, the Court will not await any reply brief from the Plaintiff.

Because Argenyi acknowledges the authenticity of the emails, it is unclear what “foundation” Argenyi claims is lacking. Instead, it appears that Argenyi wants to preserve his hearsay objections, which Creighton acknowledges he may do without necessitating the calling of his lawyers as witnesses. The hearsay objections will be addressed at the time of trial.

Accordingly, it is unnecessary to strike the names of DeLair and Vargas from the witness list or to enter a protective order to prevent Creighton from attempting to call them as witnesses.

IT IS ORDERED:

1. The Plaintiff’s Motion to Strike/Motion for Protective Order (Filing No. 292) is denied.

DATED this 12th day of August, 2013.

BY THE COURT:

s/Laurie Smith Camp
Chief United States District Judge